

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

January 5, 2004

**CALL TO PODIUM:**

Fred Felton  
Assistant City Manager

**RESPONSIBLE STAFF:**

Fred Felton  
Assistant City Manager

**AGENDA ITEM:**

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
X	Ordinance
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	10/29/2003
	11/5/2003
Hearing Date	11/17/2003
Record Held Open	12/8/2003
Policy Discussion	1/5/2004

**TITLE:**

T-360 -- The application requests amendment of Chapter 24 of the City Code (City Zoning Ordinance), entitled, "Zoning," Article I, entitled, "In General," so as to create new §24-8A. entitled, "Applicability of Special Conditions," to require compliance with master plan special conditions on approvals of applications for local map amendments, sketch plans and schematic development plans, concept plans (CD Zone), optional method and special exceptions, and further to amend Article V, entitled, "Site Development Plans," §24-179A. entitled, "Special Conditions," to conform to new §24-8 of Chapter 24.

**SUPPORTING BACKGROUND:**

Under current law, master plan special conditions are only applicable to site development plans.

The proposed ordinance would make master plan special conditions applicable to local map amendments, sketch plans, schematic development plans, concept plans, optional method applications, and special exceptions.

A joint public hearing was held on November 17, 2003. The Planning Commission's record was held open for 11 days (November 28, 2003) and is now closed. The Mayor and City Council record was held open for 21 days (December 8, 2003) and is now closed. There was no public testimony given regarding this text amendment during the public hearing. The Planning Commission at their December 3, 2003 meeting reviewed the proposed Text Amendment and has forwarded their recommendation of approval to the Mayor and City Council.

**Attached:**

Index of Exhibits

Exhibit 8: Planning Commission Staff Report

Exhibit 9: Minutes of November 17, 2003, Joint Public Hearing

Exhibit 10: Transcripts of November 17, 2003, Joint Public Hearing

Exhibit 11: Communication: Planning Commission

Exhibit 12: December 8, 2003 Letter from Peter Henry, of BP  
Realty Investments

Text Amendment Ordinance

**DESIRED OUTCOME:**

**Hold Policy Discussion and Approve Text Amendment T-360 Ordinance.**

## **INDEX OF MEMORANDA**

### **T-360**

1. Application
2. Proposed Ordinance
3. Letter requesting advertisement of the 11-17-03 Joint Public Hearing in the 10-29-03 and 11-05-03 issues of the *Gaithersburg Gazette*.  
Attached: Facsimile Transmittal Confirmation
4. Notice of 11-17-03 Joint Public Hearing as sent on 10-31-03
5. List of people/agencies notified of the hearing
6. Legal Advertisement Notification
7. **Staff Report:** November 17, 2003, Joint Public Hearing
8. **Staff Report:** December 3, 2003, Planning Commission Meeting for recommendation to the Mayor and City Council.
9. Minutes of November 17, 2003, Joint Public Hearing
10. Transcripts of November 17, 2003, Joint Public Hearing
11. Communication: Planning Commission
12. Letter to Mayor and City Council from Peter Henry, of BP Realty Investments, dated December 8, 2003
13. **Staff Report:** January 5, 2003, Mayor and City Council Policy Discussion

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## STAFF COMMENTS FOR PLANNING COMMISSION

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**MEETING DATE:** December 3, 2003

**TEXT AMDT.:** T-360

**TITLE:** SPECIAL CONDITIONS ORDINANCE

**REQUEST:** RECOMMENDATION TO M&C

**ADDRESS:** N/A

**ZONE:** N/A

**APPLICANT/REPRESENTATIVE/ATTORNEY/DEVELOPER:** (as applicable)

**STAFF PERSON:** Mark DePoe, Long-Range Planning Director

**Enclosures:**

Staff Comments

Exhibit 2: Text Amendment Ordinance

Exhibit 6: Legal Advertisement Notification

November 17, 2003 Joint Public Hearing Draft Minutes



## **STAFF COMMENTS**

A joint public hearing was held on November 17, 2003. The Planning Commission's record was held open for 11 days (November 28, 2003) and is now closed. The Mayor and City Council record was held open for 21 days (December 8, 2003). At this time, there is one addition to the record: a copy of the legal ad. The minutes provided are in draft form and will be reviewed and approved by the Mayor and City Council at their December 1, 2003 meeting. Any changes to the minutes will be provided to you during the Planning Commission meeting for this application. At such time the minutes are approved and the transcripts for the joint public meeting are completed, they will be entered into the file as exhibits. There was no public testimony given regarding this text amendment.

The T-360 Text Amendment application requests the amendment of Chapter 24 of the City Code (City Zoning Ordinance), entitled, "Zoning," Article I, entitled, "In General," so as to create new §24-8A. entitled, "Applicability of Special Conditions," to require compliance with master plan special conditions on approvals of applications for local map amendments, sketch plans and schematic development plans, concept plans (CD Zone), optional method and special exceptions, and further to amend Article V, entitled, "Site Development Plans," §24-179A. entitled, "Special Conditions," to conform to new §24-8 of Chapter 24.

Under current law, master plan special conditions are only applicable to site development plans.

The proposed ordinance would make master plan special conditions applicable to local map amendments, sketch plans, schematic development plans, concept plans, optional method applications, and special exceptions.

This item is on your agenda for a transmittal of a recommendation to the Mayor and Council.

Under Jennifer's leadership, the department won numerous awards including four Smart Growth Awards from the State of Maryland. Jennifer was involved with so many important projects over the years which helped create Gaithersburg as we know it today. Jennifer was a key staff member involved in many Master Plan efforts, zoning initiatives, and redevelopment projects such as Olde Towne Gaithersburg. Additionally, Jennifer helped implement the charrette process which we have used successfully throughout the City. We will miss Jennifer and wish her the best for the future.

Until further notice, Neighborhood Services Director Greg Ossont will be the acting Director of Planning and Code Administration. I firmly believe Greg's leadership skills and problem solving abilities will serve the City well during this transition period.

#### **XI. JOINT PUBLIC HEARINGS**

1. **T-360 - Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Entitled, "Zoning," Article I, Entitled, "In General," so as to Create new §24-8A Entitled, "Applicability of Special Conditions," to Require Compliance With Master Plan Special Conditions on Approvals of Applications for Local Map Amendments, Sketch Plans and Schematic Development Plans, Concept Plans (CD Zone), Optional Method and Special Exceptions, and Further to Amend Article V, Entitled, "Site Development Plans," §24-179A Entitled, "Special Conditions," to Conform to New §24-8A of Chapter 24**

Assistant City Manager Felton stated the above public hearing was advertised in the *Gaithersburg Gazette* on October 29 and November 5, 2003, with five exhibits in the record file. He stated that under the current law, master plan special conditions are only applicable to site development approvals by the Planning Commission. The proposed Ordinance would make the master plan special conditions applicable to Mayor and City Council and Board of Appeal actions such as local map amendments, sketch plans, schematic development plans, concept plans, optional method applications, and special exceptions.

There were no speakers from the public.

Motion was made by Commissioner Bauer, seconded by Commissioner Hicks, that the Planning Commission record on T-360, be held open for eleven (11) days.

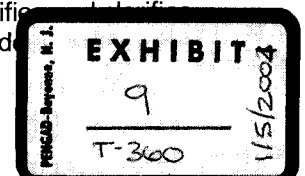
Vote: 5-0

Motion was made by Council Member Marraffa, seconded by Council Member Alster, that the City Council record on T-360, be held open for twenty-one (21) days.

Vote: 5-0

2. **T-361 - Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Article I, Entitled, "In General," so as to Create New §24-10A Entitled, "Floating Zones," to Designate Certain Zoning Districts as Floating Zones and to Establish Requirements for the Approval of Floating Zones**

Long Range Planning Director Depoe stated the above public hearing was advertised in the *Gaithersburg Gazette* on October 29 and November 5, 2003, with five exhibits in the record file. He stated that staff is viewing this as a housekeeping text amendment merely identifying that the above zones (MXD, CD, CBD) are floating zones as opposed to Euclidean. He added that City Attorney Abrams did draft the proposed text amendment.



TRANSCRIPT OF  
JOINT PUBLIC HEARING

ON

**T-360**

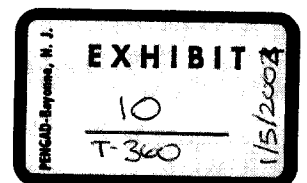
Proposal to Amend Chapter 24 of the City Code (City Zoning Ordinance), Entitled, "Zoning," Article I, Entitled, "In General," so as to Create new §24-8A Entitled, "Applicability of Special Conditions," to Require Compliance With Master Plan Special Conditions on Approvals of Applications for Local Map Amendments, Sketch Plans and Schematic Development Plans, Concept Plans (CD Zone), Optional Method and Special Exceptions, and Further to Amend Article V, Entitled, "Site Development Plans," §24-179A Entitled, "Special Conditions," to Conform to New §24-8A of Chapter 24

BEFORE THE  
CITY OF GAITHERSBURG  
MAYOR AND CITY COUNCIL  
AND  
PLANNING COMMISSION

ON

November 17, 2003

Transcribed by  
Doris R. Stokes



PARTICIPANTS

CITY COUNCIL

Mayor Katz  
Council Vice President Somerset  
Council Member Alster  
Council Member Edens  
Council Member Marraffa  
Council Member Schilchting

PLANNING COMMISSION

Chair Keller  
Vice Chair Bauer  
Commissioner Hicks  
Commissioner Levy  
Commissioner Winborne

CITY ATTORNEY

Stanley D. Abrams, Esq.

CITY MANAGER

David B. Humpton

STAFF

Assistant City Manager Felton

Katz           The next item that we have is a joint public hearing. And if I could please invite the Planning Commission to join us. We have three joint public hearings tonight. Go ahead, please Fred.

Felton        Good evening. This is a joint public hearing on T-360, an Ordinance to amend Chapter 24 of the City Code Entitled, "Zoning," Article I, Entitled, "In General," so as to Create new §24-8A Entitled, "Applicability of Special Conditions," to Require Compliance With Master Plan Special Conditions on Approvals of Applications for Local Map Amendments, Sketch Plans and Schematic Development Plans, Concept Plans (CD Zone), Optional Method and Special Exceptions, and Further to Amend Article V, Entitled, "Site Development Plans," §24-179A Entitled, "Special Conditions," to Conform to New §24-8A of Chapter 24. This hearing has been duly advertised in the *Gaithersburg Gazette* on October 29 and November 5, 2003. At the present time there are five (5) exhibits in the record file. These exhibits are referenced in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or in the Planning Office during regular business hours at City Hall. Any objections to the receipt of any exhibits should be noted prior to the closing of the record; otherwise they will be deemed received in evidence. I will give a brief presentation to outline it. Under current law, master plan special conditions are only applicable to site development approval by the Planning Commission. The proposed ordinance would make master plan special conditions applicable to Mayor and Council actions and Board of Appeals actions such as local map amendments, sketch plans, schematic development plans, concept plans, optional method applications, and Board of Appeals special exception. That's really the only presentation staff has. We are recommending that the Planning Commission keep their record open eleven (11) days and we are recommending the Council keep their record open for twenty-one (21) days with final action anticipated on December 15, 2003.



Katz           Ok. Thank you very much. Any questions of Fred? Do we have anyone in the audience that would like to testify on this public hearing? No. Ok. Thank you very much. What is the pleasure of the Planning Commission please?

Bauer          Madam Chair, I move that we keep our record open eleven (11) days as recommended by staff?

Hicks          Second.

Keller          All in favor?

Commission Ayes.

Keller          Aye. Motion passes 5-0.

Katz           It has been recommended that we hold our record open for twenty-one days. What is the pleasure of the Council please?

Marraffa       Mr. Mayor I move that we hold the record open for twenty-one (21) days, to December 8, 2003 on T-360.

Alster          Second.

Katz           It's been moved and seconded. All those in favor please say aye?

Council        Ayes.

Katz           Opposed? That carries unanimously (5-0).

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END OF JOINT PUBLIC HEARING  
T-360

**COMMUNICATION: PLANNING COMMISSION**

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**MEMORANDUM TO:** Mayor and City Council

**VIA:** David Humpton, City Manager

**FROM:** Mark DePoe, Long-Range Planning Director

**DATE:** December 8, 2003

**SUBJECT:** T-360 -- Amendment of Chapter 24 of the City Code (City Zoning Ordinance), entitled, "Zoning," Article I, entitled, "In General," so as to create new §24-8A. entitled, "Applicability of Special Conditions," to require compliance with master plan special conditions on approvals of applications for local map amendments, sketch plans and schematic development plans, concept plans (CD Zone), optional method and special exceptions, and further to amend Article V, entitled, "Site Development Plans," §24-179A. entitled, "Special Conditions," to conform to new §24-8 of Chapter 24.

At its regular meeting on December 3, 2003, the Planning Commission made the following motion:

Commissioner Winborne moved, seconded by Commissioner Hicks, to recommend Text Amendment T-360 for ADOPTION to the Mayor and City Council.

Vote: 3-0 (Absent: Commissioners Bauer and Levy)

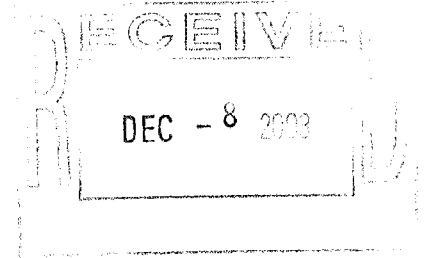




## BP REALTY INVESTMENTS

December 8, 2003

Mayor and City Council  
Planning Commission  
City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, Maryland 20877-2098



**RE: Proposed Text Amendment T-360**

Dear Mayor, City Council and Planning Commission members:

We have received the proposed text amendment T-360 to amend Chapter 24 of the City Code (City Zoning Ordinance), Entitled "Zoning," Article I, entitled, "In General," so as to create new Section 24-8A entitled "Applicability of special conditions," to require compliance with master plan special conditions on approvals of applications for local map amendments, sketch plans and schematic development plans, concept plans (CD zone), optional method and special exception, and further to amend Article V, entitled, "Site Development Plans," Section 24-107A entitled, "Special Conditions," to conform with new Section 24-8A of Chapter 24. As you know, we have certain applications pending within the City, including Z-294, CSP-02-001, Z-278A and SDP-01-001.

The proposed text seeks to permit the City overly broad rights to "custom regulate" similarly zoned properties within the City, to be applied on properties on a piecemeal basis which are subject to special conditions, requirements or public facilities standards specified in the master plan regarding a specific property.

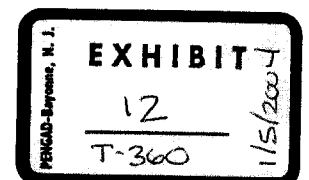
The selective application of this proposed amendment T-360 to individual properties specified by the master plan, including those subject to our long pending applications, will violate proper planning and zoning purposes, will improperly impact our private property rights, and will lead to significant legal exposure to the City. We believe that the adoption of the proposal is ill advised, and oppose it.

Sincerely,

Peter Henry

CC: David B. Humpton, City Manager  
Jody Kline, Esq.  
Benny Kass, Esq.

10000 Falls Road, Suite 100, Potomac, Maryland 20854  
(301) 299-2099 ♦ Fax (301) 299-2033



ORDINANCE No. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE I, ENTITLED, "IN GENERAL," SO AS TO CREATE NEW §24-8A ENTITLED, "APPLICABILITY OF SPECIAL CONDITIONS," TO REQUIRE COMPLIANCE WITH MASTER PLAN SPECIAL CONDITIONS ON APPROVALS OF APPLICATIONS FOR LOCAL MAP AMENDMENTS, SKETCH PLANS AND SCHEMATIC DEVELOPMENT PLANS, CONCEPT PLANS (CD ZONE), OPTIONAL METHOD AND SPECIAL EXCEPTION, AND FURTHER TO AMEND ARTICLE V, ENTITLED, "SITE DEVELOPMENT PLANS," §24-107A ENTITLED, "SPECIAL CONDITIONS," TO CONFORM TO NEW §24-8A OF CHAPTER 24.

**Text Amendment T-360**

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled that Chapter 24 of the City Code (City Zoning Ordinance), Article I is hereby amended to create new §24-8A to read as follows:

ARTICLE I. IN GENERAL

\* \* \* \* \*

**Sec. 24-8A. Applicability of Special Conditions.**

The city council and the city board of appeals as applicable, may approve a local map amendment, sketch plan, schematic development plan, concept plan (CD Zone), optional method application, special exception or amendment thereto for properties specifically identified in a master plan or amendment thereto having special conditions or requirements for the development and use thereof or special conditions or requirements as to availability of public facilities only upon a finding that said local map amendment, sketch plan, schematic development plan, concept plan (CD Zone), optional method application, special exception or amendments thereto is consistent with the conditions and requirements specified in the master plan or amendment regarding said property.

The special conditions and requirements for the development and use of these properties or public facilities requirements applicable thereto shall be imposed and set forth in the master plan or amendment thereto only after notice to the property owner and general public and a public hearing thereon as part of the master plan process. All such application and plan approvals shall be subject to enforcement procedures and requirements applicable to violations of this Chapter 24 as established by this Code.

The provisions of this section shall apply only to master plans and amendments thereto adopted after December 24, 1984.

BE IT FURTHER ORDAINED, by the Mayor and Council of the City of Gaithersburg in public meeting assembled that Chapter 24 of the City Code (City Zoning Ordinance), Article V, §24-170A is hereby amended to read as follows:

#### ARTICLE V. SITE DEVELOPMENT PLANS

\* \* \* \* \*

##### **Sec. 24-170A. Special Conditions.**

The city planning commission may approve a site development plan for properties specifically identified in a master plan or amendment thereto having special conditions or requirements for the development and use thereof, or special conditions and requirements as to availability of public facilities only upon a finding that said site development plan is consistent with the conditions and requirements specified in the master plan or amendment regarding said property.

The special conditions and requirements for the development and use of these properties or public facilities requirements applicable thereto shall be imposed and set forth in the master plan or amendment thereto only after notice to the property owner and general public and a public hearing thereon as part of the master plan process. All such site development plans shall be subject to enforcement procedures and requirements applicable to site development plans generally as established by this Code.

The provisions of this section shall apply only to master plans and amendments thereto adopted after December 24, 1984.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2004, by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2004, APPROVED/DISAPPROVED by the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_ day of \_\_\_\_\_, 2004, and the same was approved by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2004. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
DAVID B. HUMPTON, City Manager